

forbade seditious language. If it was going to give the royalists any consolation to talk about the monarchy, let them have it. It was all the consolation they would ever get.

Minister Damon supported the amendment. The freedom of speech was a greater safeguard for the Government than all the rifles which could be bought. The greatest freedom of speech had been allowed by the Government from the beginning, and that had been its strength.

Delegate Ables was strongly in favor of the amendment. He had intended to make it himself. Let the royalists get out and talk as much as they like. It did not cost us anything.

Delegate Josepa thought there should be something in the Constitution to prevent people from going too far. If they were allowed to talk indefinitely, by and by they would begin to act. He moved passage as it was.

Delegate Vivas thought if they were passing a Constitution for a monarchy, such a gag on the press would be appropriate; but it was out of place in that of a republic. He agreed with the Minister of Foreign Affairs, that the seditious laws were all sufficient. Councillor Waterhouse asked what effect this amendment would have on the constitutionality of the seditious laws.

Minister Smith read the provisions of the old Constitution as follows:

Article 3. All men may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of that right, and no law shall be enacted to restrain the liberty of speech, or of the press.

It did not interfere with seditious law; neither would this.

Delegate Robertson moved the language of the Constitution of 1887 be adopted.

Minister Smith drew attention to the fact that the effect of the two was the same.

President Dole thought there was need of something more than that article. There was no law on the statute books which gave the Government power to suppress an indecent or seditious publication.

The amendment of Delegate Robertson was lost and that of Minister Hatch adopted.

President Dole then offered an amendment adding after the words "abuse of such right" in line 6 the words "provided, however, that the Legislature may enact such laws as may be necessary to restrain and prevent the publication or public utterance of seditious or indecent language."

The President stated that without this provision the Legislature would have no power to restrain seditious and indecent utterances. There were some papers in this town which had lately used words which could not be repeated on the floor of this house. The provision was necessary to protect the country from immoral as well as seditious influences. It would not do to say that we could stand utterances of this kind. They had said the same of anarchistic utterances in Chicago, and the result had been disaster and assassination. Their experience had resulted in a measure authorizing the suppression of such newspapers.

The amendment was adopted and the section as amended passed.

ARTICLE 4.—MEETING AND PETITION.

All men shall have the right to assemble in an orderly and peaceable manner, without arms, to consult upon the common good and to petition the President or Legislature for redress of grievances.

Passed.

At 11:55 the committee rose and reported, and asked leave to sit again at 1:30. The report was adopted and the Convention then took a recess.

AFTERNOON SESSION.

At 1:30 the Convention was called to order, and the committee of the whole proceeded with its deliberations.

ARTICLE 5.—WRIT OF HABEAS CORPUS.

The privilege of the writ of habeas corpus belongs to all men, and shall not be suspended, except by the President or by one of the Cabinet Ministers as herein provided, when in case of rebellion or invasion, or imminent danger of rebellion or invasion, the public safety shall require its suspension.

Provided, however, that no alien unlawfully entering the Republic shall be entitled to this writ as of right.

Delegate Carter moved the word "Ministers" in line 4, be stricken out.

Councillor Ena asked how the word "Cabinet" would be translated if the word "Ministers" was stricken out.

Minister Smith asked the object of the amendment.

Delegate Carter said it was to exchange the word Minister for Secretary.

Minister Smith opposed that change. The word Minister was customary. The statement that it savored of monarchy was immaterial. No changes from established usage should be made unless something of importance was to be gained by it.

President Dole said the question had been much discussed when the Constitution was drafted. These officers are called Secretaries in the United States, Ministers in France. Here they shared the executive power with the President. In the United States they did not. They are here more than mere secretaries. It had seemed wise on the whole to retain the word Minister.

Delegate Kahalelo favored passing the article as it was, particularly in Hawaiian. The Hawaiian phrase, "Kakalelo," would degrade the office. The word Minister had always been used, and he favored its retention.

Minister Hatch said he differed from his colleagues on this point. The term Minister was indissolubly linked with monarchy. He favored the use of the word Secretary, without reference to the powers attached to the office. It was not necessary to translate the phrase literally.

The amendment was lost and the article was passed as in the original draft.

ARTICLE 6.—RIGHT OF TRIAL.

Section 1. No person shall be subject to punishment for any offense except on due and legal conviction thereof by a tribunal having jurisdiction of the case.

Passed.

Section 2. Except in case of impeachment or of a district magistrate, or in summary proceedings for contempt, no person shall be held to answer for any crime or offense except upon indictment, information or complaint, describing such crime or offense; and he shall in all cases have the right to meet the witnesses who are produced against him, face to face; to produce witnesses and proofs in his own favor; and by himself or his counsel, at his election, to examine the witnesses produced by himself and cross-examine those produced against him, and to be heard in his own defense.

Delegate Robertson moved to strike out the words "crime or" in the 9th and 11th lines, in order to make it correspond to the language used in the beginning of the section, where "offense" only is specified.

Passed, and the section as amended was adopted.

Section 3. Subject to such changes as the Legislature may from time to time make in the number of jurors for the trial of any case, and concerning the number required to agree to a verdict and the manner in which the jury may be selected and drawn, and the composition and qualifications thereof, the right of trial by jury in all cases in which it has been heretofore used, shall remain inviolable forever, except in actions for debt or assumpsit in which the amount claimed does not exceed one hundred dollars, and such offenses less than felonies as may be designated by law. And provided that no capital case shall be tried by a jury of less than twelve men.

The jury may be waived by defendants in all criminal cases except capital.

Minister Smith moved to strike out the word "forever" in line 25, as it was superfluous.

Delegate Robertson moved to insert in line 31, before the word "criminal," the words "civil and," as it might be construed against the right of jury waiver in civil cases.

Minister Hatch said the same result could be reached by striking out the word criminal.

Councillor Brown moved to amend so that it read, "The jury may be waived in all civil cases, and by defendant in all criminal cases except capital."

Delegate Robertson moved to amend by adding, after the word "criminal" in line 31, the words "under such conditions as may be prescribed by law," as the jury could not be waived except by the consent of both parties. The same member substituted an amendment, making the clause read: "The jury may be waived in all civil cases, under such conditions as may be prescribed by law, and by defendant in all criminal cases except capital."

This amendment was adopted.

Minister Smith drew attention to the fact that this article did not change the jury system, but merely permitted its being changed by law.

The section as amended was passed.

ARTICLE 7.—PREVIOUS CONVICTION OR ACQUITTAL.

Except as herein provided, no person shall be required to answer for any offense identical both in law and fact with an offense of which he has been duly convicted or of which he has been duly acquitted.

Delegate Carter moved to add in line 5 the words, "Nothing herein provided shall deprive the people of the right to exceptions or appeals."

Mr. Smith suggested the substitution of the word "Government," and supported the amendment. There was no reason why society should have no remedy in cases where there had been a plain miscarriage of justice.

Councillor Brown said this was so radical a change that it was proper to go slow. In Great Britain some change had been made, but he did not feel sure that the State had been given the absolute right of appeal. He did not see the necessity of making so direct an innovation. He also did not see the use of the words, "except as herein provided."

Minister Damon did not see the justice in allowing the Government to keep a man in prison for an indefinite period, when it had failed to carry its point. It should prepare its case in such a manner that justice would not miscarry.

The amendment was lost.

Councillor Brown moved to strike out the words, "except as herein provided." Carried, and the article thus amended passed.

ARTICLE 8.—PRIVILEGE OF ACCUSED.

No person shall be compelled, in any criminal case, to be a witness for himself nor be deprived of life, liberty or property without due process of law.

Minister Smith moved to substitute in line 3 the word "against" for the word "for."

Carried and the amended article passed.

ARTICLE 9.—SLAVERY.

Involuntary servitude, except for crime, is forever prohibited in this Republic. Whenever a slave shall enter the territory of this Republic he shall be free.

Passed.

ARTICLE 10.—SECURITY FROM SEARCH AND ARREST.

Every person has the right to be secured from all unreasonable searches and seizures of his person, his house, his papers and effects; and no warrant shall issue, except on probable cause, supported by oath or affirmation, and describing the place to be searched and the persons or things to be seized.

Delegate Robertson moved to strike out the letter "d" in the word "secured" in line 2.

Carried and the amended section passed.

RIGHTS OF PROPERTY.

ARTICLE 11.—TAXING AND APPROPRIATING POWER.

Section 1. No subsidy, duty or tax of any description shall be established or levied without the consent of the Legislature; nor shall any money be drawn from the public treasury without such consent, except in the manner directed by this Constitution.

Passed.

Section 2. Each member of society has the right to be protected in the enjoyment of his life, liberty and

property, according to law; and therefore he shall be obliged to contribute his proportion or share to the expense of this protection; and to give his personal services, or any equivalent, when necessary, as may be provided by law.

Passed.

ARTICLE 12.—EMINENT DOMAIN.

Private property may be taken for public use, or may be used for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, milling, mining, domestic or sanitary purposes; but only upon due process of law and just compensation.

Councillor Brown thought there should be something to cover railroads, to show that it was not the intention of the Convention to exclude them.

Minister Smith said railways came under highways.

Councillor Brown said a sugar plantation might want a line. He thought it would be absolutely excluded under this article. He would move to insert the word "railroads" in line 3.

After some debate, Delegate Carter moved to insert before "reservoirs" in line 3 the words "railroads and other carriers and ferries."

Councillor Emmeluth thought the matter of so much importance that its consideration ought to be deferred, and he would so move.

Minister Damon held that private property should only be taken for public uses, when it would be under public control.

Minister Smith said the same arguments had been used in France, Italy and Spain; but now, so much benefit had been derived from overriding them, that no one would wish a change. The public derived the greatest benefit from the liberal use of the right of eminent domain.

Delegate Robertson thought it was going too far to allow the land of one person to be taken for the domestic and sanitary convenience of another. He would move to strike out the words "domestic or sanitary" in line 5, and insert the word "or" after milling in line 4.

Delegate Josepa favored the article with the amendment.

Minister Damon moved to omit the words "reservoirs" and "on or" in line 3. That would confine the matter to its legitimate scope.

Councillor Brown agreed with Minister Damon that the word "reservoirs" might be stricken out.

Delegate Carter said that to strike out the word "reservoirs" might make great and useful public improvements impossible. He submitted that there was enough protection for landowners in the last clause. He thought with one of the other members, that the Convention was hearing a good deal from the large landowners.

President Dole offered another amendment.

Minister Damon moved that when the Convention rise it recommend reference of the article to a committee.

The last motion was carried.

ARTICLE 13.—MILITARY SUBJECT TO LAW.

Section 1. The military shall always be subject to the laws of the land.

Passed.

Section 2. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war but in a manner prescribed by the Legislature.

Passed.

OF THE REPUBLIC.

ARTICLE 14.—FORM AND NAME OF GOVERNMENT.

The character of the government hereby instituted is a Republic, under the terms and conditions of this Constitution.

The name of such government is, and shall be, the Republic of Hawaii.

Minister Hatch moved to strike out the words "The character of" in line 2, and to substitute "this" for "such" in line 5.

Delegate Robertson moved to strike out the word "of" in the title for the sake of uniformity, as it did not appear in the caption "Rights of Property."

Both amendments were adopted, and the article, as amended, passed.

ARTICLE 15.—TERRITORY.

The territory of the Republic of Hawaii shall be that heretofore constituting the kingdom of the Hawaiian Islands, and the territory ruled over by the Provisional Government of Hawaii, or which may hereafter be added to the Republic.

Passed.

ARTICLE 16.—ENSIGN.

The ensign heretofore in use as the Hawaiian National Ensign, shall continue to be the national ensign of the Republic of Hawaii.

Passed.

There was quite a burst of applause when Article 16 was read.

ARTICLE 17.—CITIZENS.

Section 1. A citizen of the Republic of Hawaii shall be:

A person born in the Hawaiian Islands; or

A person who has been, or shall hereafter become naturalized according to law.

Passed.

Councillor Emmeluth asked if this made all persons citizens (meaning particularly the Chinese) who had ever been naturalized before. He did not see why we should date back in this way and consider persons who had otherwise no standing under the law. He would move to amend by striking out the words "has been" in line 5.

President Dole said he understood Councillor Emmeluth had in mind a number of Chinese who had naturalized under the Constitution of 1887, in order to be able to return here if they liked. These men would not, under this Constitution, be able to vote, because they did not do so before. He objected to Councillor Emmeluth's motion. It would look very badly and would be depriving men without cause of a solemnly granted right. It would damage the reputation for honor and honesty of this Government throughout the world, and would impair the value of its letters of naturalization, and give them the air of a temporary privilege. The Government was obliged to protect all its citizens at home and abroad. This proposition was an injustice from every point of view.

Councillor Emmeluth asked what

the relation of the Government was to the Hawaiian citizen of Chinese birth who had gone back to China.

President Dole said they were the same as to any other citizen abroad.

Councillor Emmeluth withdrew his amendment.

Delegate Carter moved to amend the section so as to read, "All persons born or naturalized in the Hawaiian Islands and subject to the exclusive jurisdiction thereof, are citizens of the Republic."

President Dole said the trouble of that amendment was that the citizens already naturalized here were so under an oath which did not require foreign allegiance to be at all. This would make complications and would probably disturb the status of all such persons.

Councillor Emmeluth said the only way to make this a civilized country was to adopt all such half-way measures and have nobody a citizen who was not altogether a citizen. Citizenship in the past had nothing to do with citizenship in the future. Let the law be as simple as possible. He was willing himself to forswear his American allegiance, and come in as a Hawaiian citizen and work for annexation.

Delegate Hitchcock said that if Mr. Carter's amendment carried he would not know where he stood. He was born here and had always regarded himself as a Hawaiian citizen and voted here. But when he went to the United States in '92 he was claimed as an American citizen and voted there. Congress had passed a special Act covering such cases. Would he have to naturalize if Mr. Carter's amendment carried? That, he contended, would not be just.

Delegate Carter said the rights of the franchise and citizenship should not be confused. The franchise might be given to non-citizens, and the fact that the United States Congress bestowed upon him the right to vote (Minister Smith—No, not the right to vote, but citizenship) did not deprive him of his Hawaiian citizenship. As to the Chinese citizens, he should be very sorry to recede from the honorable position taken by the President. As to others, however, he thought a time had come when they should choose to what citizenship they will look.

Minister Smith hoped that no one would go so far as to repudiate a national obligation. It would be a lasting disgrace to do so. There seemed to be some confusion here. These people did not have the franchise. Moreover, this proposition would affect English, Germans and other nationalities besides Chinese. He trusted the section would pass as in the draft.

Delegate Carter's amendment was lost and the section passed as in the original draft.

SPECIAL RIGHTS OF CITIZENSHIP.

Section 2. Any person not a Hawaiian citizen, who took active part, or otherwise rendered substantial service in the formation of, and has since supported the Provisional Government of Hawaii, who shall within six months from the promulgation of this constitution procure from the Minister of the Interior a certificate of such service, in manner and form herein set forth; and who shall take an oath to support this constitution and the law of the Republic so long as he shall remain domiciled in the Republic, shall be entitled to all the privileges of citizenship without thereby prejudicing his native citizenship or allegiance.

Delegate Hitchcock asked whether this provision would apply to persons in the outer districts who had no opportunity to assist in forming the Provisional Government, but who had registered and supported it since its formation.

President Dole thought it would.

Councillor Emmeluth moved the section be stricken out. It took three lines to describe citizenship and twenty-six to get out of the definition. It was a specimen of the half-hearted way of doing things.

President Dole said the merits of an article did not depend upon its length. He claimed that this section was most important. These men had fully earned the rights of citizenship by their loyal support of the Government, and it would be a wrong to bar them out. They might have the best of reasons for not being willing to forego their foreign citizenship. Moreover, these men had the right to vote under the old Constitution, and would lose it without a provision of this kind.

Delegate Ables heartily agreed with the President on this subject. Without this provision many of the strongest supporters of the Government would be disfranchised.

A motion was made and carried to recommend the Convention to refer the section to the Committee of the Convention on Legislation.

On motion of Delegate Robertson the following three sections were referred to the same committee:

At 4:07 the committee rose and reported progress, and asked leave to sit again. The report was adopted, except that Article 12 was referred to a special committee.

At 4:15 the Convention adjourned until Tuesday at 9:30 a. m.

Election of Officers.

AT THE ANNUAL MEETING OF the stockholders of the Oahu Railway & Land Co. held this day, the following officers were elected for the ensuing year:

John H. Paty.....President
W. F. Allen.....First Vice-President
J. B. Atherton.....Second Vice-President
W. G. Ashley.....Secretary
M. P. Robinson.....Treasurer
W. M. Graham.....Auditor

Who with the following—J. G. Spencer, J. B. Cassie and H. M. von Holt, constitute the Board of Directors.

W. G. ASHLEY,
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Official Programme!

Races to Commence at 10 a. m. Sharp.

1st—BICYCLE RACE.

Prize: Silver Medal, valued at \$25. Entrance fee \$1.50; 1 mile dash. Free for all.

2d—KALAKAUA PURSE \$100.

Running Race; 1/2 mile dash. Free for all.

3d—HONOLULU PURSE \$100.

Trotting and Pacing, to Harness; 2:40 class. Free for all. Mile heats; best 2 in 3.

4th—ROSITA CHALLENGE CUP, \$200 ADDED.

Running Race; 1 mile dash. Free for all. Winner of cup to beat record of Angie A. 1:45 1/2.

5th—PRESIDENT WIDEMANN'S CUP, \$75 ADDED.

Running Race; 1/2 mile dash. For Hawaiian bred.

6th—JOCKEY CLUB PURSE \$100.

Trotting and Pacing, to harness. Free for all. Mile heats; best 3 in 5.

7th—OCEANIC STEAMSHIP CO.'S PURSE, \$100.

Running Race; 1 mile dash. For Hawaiian bred.

8th—MAUI PURSE \$100.

Trotting and Pacing, to harness; 3 minute class. For Hawaiian bred. Mile heats; best 2 in 3.

9th—KAPOLANI PARK PURSE \$125.

Running Race; 1 1/2 mile dash. Free for all.

10th—KAMEHAMEHA PURSE \$100.

Trotting and Pacing, to harness. For Hawaiian bred; mile heats; best 2 in 3.

All entries are to be made with the Secretary, at the office of C. O. Berger, on Merchant street, before 2 p. m. Wednesday, June 6th, 1894, at which time they will close. Entry fees to be 10 per cent of the purse, unless otherwise specified.

All races are to be run or trotted under the rules of the Hawaiian Jockey Club.

All horses are expected to start unless withdrawn by 12 o'clock noon, on June 9th, 1894.

All horses must appear on the track at the top of the bell from the Judges stand, otherwise they will be fined.

General admission.....50 cents
Grand stand (extra).....50 cents and \$1
Carriages (inside of course) each.....\$2.50
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